No. 78-1329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, *Petitioner,*

v.

THE NAVAJO TRIBE, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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This brief is filed by respondent, The Navajo Tribe, in opposition to the petition of the United States for a writ of certiorari to review the interlocutory judgment of the United States Court of Claims entered in this case on October 18, 1978.

QUESTION PRESENTED

The Government's statement of the Question Presented erroneously presupposes that the jurisdictional issue can properly be considered by the Court in this case as the record now stands. However, the jurisdictional issue has not yet been decided in this case; the

Court of Claims' decision below merely confirmed the long-standing rule that post-enactment relief can be granted under the Indian Claims Commission Act on a proper factual showing in accordance with established equity doctrines. Review of that decision would, therefore, be clearly premature. Regardless of the question's importance or the alleged burdens on the Government, its Petition should be denied because the Court cannot properly decide the issue until the Court of Claims has finally decided which issues may, under the Court's equity jurisdiction as the Indian Claims Commission's successor, involve events or transactions after the date of enactment.

The Petition asserts [p. 2] that "events and transactions" after enactment of the Indian Claims Commission Act are wholly excluded from the Commission's jurisdiction. That assertion is admittedly contrary to the Government's position in *Gila River Pima-Maricopa Indian Community* v. *United States,* 140 F.Supp. 776 (Ct. Cl. 1956) [Petition, pp. 6-7, 9] and numerous Court of Claims and Commission rulings which followed that decision over the last 23 years [Pet. App. A, pp. 27a-28a]. Moreover, the Government concedes [p. 11] that "an accounting is due for post-1946 *consequences* of earlier wrongs." Since, under the Government's theory, the Court of Claims has jurisdiction to consider some post-enactment "events and transactions," this Court cannot decide whether post-enactment "events and transactions" are jurisdictionally precluded until factual evidence is adduced and reviewed by the Court of Claims.

The question presented by the Petition is whether the jurisdictional issue is now ripe for decision in this

case. The questions raised by that issue are stated below, but they should not be considered until the record has been completed:

1. Whether Congress, in enacting section 2 of the Indian Claims Commission Act, intended the language precluding Commission consideration of any "claim accruing after August 13, 1946" to prevent the full consideration and determination of claims based upon wrongful conduct by the United States that began before and continued after August 13, 1946.

2. Whether, given the special remedial purposes of the Indian Claims Commission Act and the maxim that ambiguities in Indian statutes are to be construed in their favor, Indian tribes are to lose all right to a determination of such continuing-wrong claims where:

a) the Act for many years has been legally construed to allow the litigation of those claims by the Indian Claims Commission alone and that "interpretation does not cross the literal words of the statute";[1]

b) litigation in the Court of Claims prior to the expiration of the statute of limitations was effectively precluded by the 1956 ruling in *Gila River,* made at the behest of the United States, that the Indian Claims Commission, and not the Court of Claims, was the only appropriate forum to determine the post-enactment portion of continuing-wrong claims; and

c) it is too late now to file those claims in the other possible forum, the Court of Claims, because of the statute of limitations.

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[1] Pet. App., at 15a.

COUNTER-STATEMENT OF THE CASE

The Court of Claims below denied the Government's motion for summary judgment, which collaterally attacked two rulings of the Indian Claims Commission:

1. *The Self-Dealing Issue.* The Commission repeatedly ruled that the Government's use of tribal funds to pay the costs of its own operations on the Navajo Reservation was wrongful self-dealing, that such wrongful use of tribal funds continued after the enactment date, and that the Government should prepare an accounting of such use of tribal funds to a current date. 31 Ind. Cl. Comm. 40, 52 (1973), 34 Ind. Cl. Comm. 432, 434-35 (1974), 36 Ind. Cl. Comm. 433, 434-35 (1975), 39 Ind. Cl. Comm. 252 (1976).

2. *The Individual Indian Money Issue.* The Commission ordered the Government to furnish to the Tribe a supplemental accounting covering tribal funds held in accounts outside the United States Treasury, called "Individual Indian Money" or IIM accounts, which were not fully disclosed by the General Accounting Office's (GAO) 1961 accounting report on Navajo tribal funds, and denied a further Government motion to exclude from the supplemental accounting 35 accounts established after the date of enactment. 31 Ind. Cl. Comm. 40, 44-46 (1973), 36 Ind. Cl. Comm. 181 (1975), 39 Ind. Cl. Comm. 10, 32, 252 (1976).

Since the IIM issue arose from the Commission's 1973 determination that the Government's 1961 accounting report was inadequate and must be supplemented, the statement on page 5 of the Petition that "no question arises here as to the sufficiency of its accountings for the period before August 13, 1946" is incorrect and misleading. The statement implies that

both the self-dealing issue and the IIM issue can be solved on the basis of the General Accounting Office's 1961 accounting report covering tribal funds held in Treasury accounts and some IIM accounts. The Commission's finding that the 1961 report was incomplete and must be supplemented shows instead that the identification of "wrongs" that continued after enactment must await completion of further accountings and the Court's determination of the wrongs involved.

The self-dealing issue arose from the Commission's award of partial summary judgment in the Tribe's favor for $10,584.76, 31 Ind. Cl. Comm. 40, 53 (1973), which included improper disbursements of tribal funds from Treasury accounts both before and after the date of enactment listed in the General Accounting Office's 1961 report under the heading "miscellaneous agency expenses." The Commission later vacated that judgment to the extent of $1,557.42, the amounts disbursed after the enactment date, and ordered the up-to-date accounting. 39 Ind. Cl. Comm. 252 (1976). The disbursements tabulated as "miscellaneous agency expenses" by the GAO staff did not include all disbursements of tribal funds for the Government's benefit shown in the 1961 accounting report, and the scope of the up-to-date accounting may not be entirely clear. There has not yet been a determination of either the total amount of tribal funds misapplied by the Government or the particular forms of self-dealing involved, whether before or after the date of enactment.

The Government's argument for exclusion of the 35 post-enactment IIM accounts was rejected by the Commission because the Tribe showed that the funds deposited in those accounts had been predominantly transferred from other accounts established and held

by the Government before the enactment date. The "wrongs" alleged by the Tribe in connection with IIM accounts included not only improper disbursements (including self-dealing) but failure to maintain adequate records (no records exist to support about $6 million of tribal funds disbursed), and violation of statutes requiring reservation revenues to be deposited in Treasury accounts on which 4% interest is payable. Until the supplemental reports are furnished and a determination of such pre-enactment wrongs has been made, it is not possible to project what post-enactment matters may be involved.

The Petition, therefore, asks the Court for a preliminary ruling that the Government may not be held liable or accountable for any "event or transaction" after the date of enactment, regardless of the nature of the wrong or any possible relation to pre-enactment events. The sole reason offered for the requested reversal of the long-standing contrary rule is the large expense forecast by the GAO's successor, the Indian Trust Accounting Division of the General Services Administration [Pet. App. B]. Yet the Government's additional accounting reports, already ordered below, must be completed before the jurisdictional issue can be decided by the Court of Claims and thus properly defined for this Court's consideration. Since pre-enactment wrongs have not been finally determined, the Government's expense for any additional accountings that may be required is obviously speculative, and the Division's estimate is monstrously overblown. As the affidavit attached hereto as Appendix A states, the policy of using tribal funds for the Government's benefit was abandoned in the 1950's, and the proliferation of IIM accounts also ceased a few years after 1951.

The Government's burdens in this case are by no means forbidding.

Finally, the Government's effort to obtain interlocutory review of its jurisdictional defense is contrary to the terms of the Indian Claims Commission Act, 60 Stat. 1054, as amended by 74 Stat. 829, 25 U.S.C. § 70s(b), set forth in Appendix B hereto. In 1960, after appropriation hearings in Congress, the Act was amended to allow interlocutory appeals from an order finding the Government liable. In *United States* v. *Fort Sill Apache Tribe,* 481 F.2d 1294, 1296 (Ct. Cl. 1973), the Court of Claims held that an interlocutory appeal could not be taken by the Government from an adverse ruling on a jurisdictional defense, noting "the major problem created by the appellant's position is that it just does not fit the statutory language. Disposition of a motion questioning the jurisdiction of the Indian Claims Commission would not reach the issue of liability on the merits." To grant a writ in this case would also be contrary to the statutory language, since the Government's liability has not been decided below.

ARGUMENT

I. The Petition Is Premature

The Petition asks this Court to review and reverse the Court of Claims' denial of the Government's motion for summary judgment on the ground that, strictly as a matter of law, the Court of Claims as the Commission's successor has no jurisdiction to entertain claims based on "events and transactions" after the date of enactment. Yet the Government concedes that jurisdiction *may* exist over post-enactment events and transactions depending upon the facts. Petition, p. 11. The Government's decision not to seek review of

the companion decision, *United States* v. *Gila River Pima-Maricopa Indian Community,* 586 F.2d 209 (Ct. Cl. 1978), which affirmed judgment against the Government after a full trial for payments before and after the enactment date of tribal funds for charges improperly imposed for operation and maintenance of a federal irrigation project, indicates that the evidence established the Commission's jurisdiction to grant post-enactment damages in that similar case. The wrong in *Gila River* was basically self-dealing, and the Court should conclude that the same issue here cannot be disposed of at this preliminary stage of the litigation.

Except with respect to the tiny amount of post-enactment "miscellaneous agency expenses" disclosed in the 1961 accounting report, the Court of Claims below did not assert jurisdiction over post-enactment events or transactions. Its decision merely held that such jurisdiction might become established by later evidence, depending on what facts are shown. The Court of Claims' jurisdictional decision will not be made until such evidence is adduced, perhaps within the next year or so.

The Government's motion for summary judgment raised the issue of whether the wrongful expenditures of tribal funds after August 13, 1946 should be viewed as isolated transactions giving rise to separate claims under the Act or were part of a continuing illegal administrative policy and practice for which a court of equity could grant complete relief. The Commission's order that the Government account for all such expenditures is nothing more than an order to produce information in the form of an organized report which is essential to the final resolution of the jurisdictional

question. *Dillman* v. *Hastings,* 144 U.S. 136 (1892). In any event, the Indian Claims Commission, and the Court of Claims as its successor, had jurisdiction to inquire into its own jurisdiction by ordering the Government to produce that information. See, *e.g., Harmon* v. *Brucker,* 355 U.S. 579 (1958). The Court held in essence that it could not decide that jurisdiction was lacking until the information was produced and the facts were before it.

This Court has repeatedly emphasized the strong policy reasons for declining to review interlocutory decisions. In holding that it did not have jurisdiction to consider an appeal of a denial of summary judgment, the Court in *Goldstein* v. *Cox* 396 U.S. 471, 478 (1969) explained:

> "In the absence of clear and explicit authorization by Congress, piecemeal appellate review is not favored, Switzerland Assn. v. Horne's Market . . . [385 U.S. 23, 24 (1966)], 17 L.Ed. 2d at 24 and this Court above all others must limit its review of interlocutory orders. Hamilton Shoe Co. v. Wolf Brothers, 240 U.S. 251, 258, 60 L.Ed 629, 633, 36 S. Ct. 269 (1916)."

See, also, *Baltimore Contractors, Inc.* v. *Bodinger,* 348 U.S. 176 (1955). In this case, Congress limited interlocutory appeals to matters involving determinations of the Government's liability, 25 U.S.C. § 70s(b), *supra.* The ruling below rejected the Government's jurisdictional defense, but it did not determine its liability, and would not be appealable before final judgment under the rule of *United States* v. *Fort Sill Apache Tribe, supra.*

The same principles embraced in those cases apply to petitions for certiorari addressed to this Court. Al-

though in certiorari cases there is no jurisdictional bar to the Court's consideration of interlocutory orders, such review should not be granted except in extraordinary cases. *American Construction Co.* v. *Jacksonville, T. & K. R. Co.,* 148 U.S. 372, 384 (1893); *Hamilton Shoe Co.* v. *Wolf Brothers,* 240 U.S. 251, 258 (1916).

II. The Decision Below Is Correct And Within The Court's Jurisdiction

The decision below correctly applied established doctrines of equity in this general accounting suit by the tribal beneficiary against its trustees, and its decision was clearly within the Congressional grant of jurisdiction in the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. § 70 *et seq.,* as amended, quoted in pertinent parts in Petition, pp. 2-4. That Act granted jurisdiction, in law or equity, over all claims accrued as of August 13, 1946, the date of enactment. Respondent's claim for a general accounting is a classic equitable claim that accrued before August 13, 1946, and respondent's timely filed petition conferred upon the Indian Claims Commission full equity jurisdiction over the subject matter of the suit. There is no reason to suppose that Congress, once having granted jurisdiction over the subject matter of that accounting claim, intended to impose restrictions on the Commission's authority to apply all established doctrines of equity in adjudicating the claim. In accordance with the doctrine that equity will grant full relief, the Commission once having obtained jurisdiction of respondent's accounting claim retains jurisdiction over all aspects of the case. *Porter* v. *Warner Holding Company,* 328 U.S. 395 (1946).

The Government's theory that each illegal or erroneous act by the federal trustee must be treated as a separate cause of action for damages deliberately confuses the Commission's clear equitable jurisdiction with the Court of Claims' ordinary jurisdiction over legal actions sounding in contract. The argument that each defalcation is a separately actionable wrong is novel nonsense in the context of a general accounting suit.

In *Hall's Western Auto Supply Co.* v. *Brock,* 400 P.2d 5 (Ore. 1965), the Supreme Court of Oregon held that the assignee of a debtor's wages must account to the creditor for all funds which came into its possession after the suit for an accounting was commenced. The court held:

> "Equity, having once gained jurisdiction, will proceed to dispose of the matter fully. Plaintiff is entitled to an accounting of those funds, if any, in Budget Consultants' possession or control at the time of service of process and coming into its hands subsequent thereto. *An accounting is not limited to conditions existing at the time the suit was instituted but covers all matters up to the final stating thereof.*" 1 C.J.S. Accounting § 41b, p. 683.

See, also, *Bearse* v. *Lebowich,* 125 N.E. 621 (Mass. 1920); *Ensign* v. *Faxon,* 118 N.E. 337 (Mass. 1918); *cf., Johnston* v. *Farmers and Merchants Bank,* 93 S.E. 2d 916 (S.C. 1956).

Under traditional rules of equity, the suit for a general accounting is, itself, the beneficiary's claim. If an accounting rendered in the suit discloses a series of improper transactions, the trustee will be "surcharged" to restore to the trust the amounts it would have held had the improprieties not occurred, in accordance with the maxim "equity treats as done what should have

been done." *Restatement of Trusts,* 2d (1959) § 205; Bogert, *Trusts and Trustees,* (2nd ed., 1962) § 971. Each instance of wrongdoing does not become a separate cause of action at law for debt. Equity has inherent power to order the trustee to make good all malfeasance disclosed by his account. The Court does not lose jurisdiction until the account is finally and properly stated, the trust is restored in accordance with the account, and the trustee is discharged for the period of the account. Based on those principles, the decision in *Southern Ute Tribe* v. *United States,* 17 Ind. Cl. Comm. 28 (1966), *aff'd,* 423 F.2d 346 (Ct. Cl. 1970), ordered the Government to prepare up-to-date general accountings for the tribal beneficiary. That decision was a correct application of equitable doctrines.

The Commission later modified those basic rules to require up-to-date accountings only where wrongful action had occurred before the date of enactment, and the wrong was of the nature that it continued to occur after that date. *Papago Tribe* v. *United States,* 26 Ind. Cl. Comm. 365 (1971). The Commission thereby invoked the rule that equity grants complete relief for "continuing claims." That rule is especially, but not exclusively, applicable in trust accounting suits.

In this case, plaintiff's claim or suit for a fiduciary accounting is based on the Government's self-imposed assumption of a trust relationship with the plaintiff under its laws and the Treaties of September 9, 1849, 9 Stat. 974, and June 1, 1868, 15 Stat. 667, and its failure to account to the Navajo Tribe for its action as trustee. That claim was fully accrued before August 13, 1946. Respondent's original petition, which sought an accounting and did not set forth a multitude of causes of action, belies any notion that its claim arises

in separate transactions as subsequently disclosed by the Government's 1961 accounting report. The "claim" is the suit for an accounting. Once that suit was commenced by the timely petition, the Commission acquired full equity jurisdiction and could proceed to grant complete relief. Congress placed no restrictions on its grant of jurisdiction under the Indian Claims Commission Act, and the decision below was correct.

III. The Government Exaggerates The Importance Of The Issue On The Basis Of An Unsworn, Inaccurate Letter.

The principal ground urged by the Government for the issuance of a writ of certiorari is that it would be expensive for the Government to prepare for trial of "continuing wrong" issues. Since those issues have not yet been identified below, it is obvious that the Government has no real basis for its argument that great burdens are involved. The Brief in Opposition to the Petition filed by the Nez Perce Tribe examines the Government's claim in great detail and shows it to be entirely bogus. The Navajo Tribe approves the Nez Perce Tribe's response.

The foundation for the Government's entire argument that the issues presented warrant the Court's review is a self-serving, unsworn letter that does not even appear in the record of this case. The letter attached as Appendix B was written 20 days after the Court's decision below at the request of the Government's attorney in this case for the obvious purpose of impressing this Court with the alleged consequences of the decision below. The letter is deceptive in several important aspects. See Affidavit of Paul J. Gillis, Certified Public Accountant, attached hereto as Appendix A. The Government employee who wrote the

letter made a generous guess of the time and money that might be required to update the Government's accounting reports, not only in this case, but also in the hypothetical cases of several other Indian tribes which may present similar issues. The author of the letter apparently assumed that a full general accounting of all of the Government's transactions as trustee on behalf of the Navajo Tribe from 1946 to date would be ordered by the Court. That assumption flies in the face of the decision below which limits the Court of Claims' jurisdiction to those instances in which the plaintiff can show an actual pre-1946 wrong which continued thereafter. Defendant can hardly be expected to concede that virtually every action it took as respondent's trustee was part of a continuing wrong. Yet the estimate was apparently based on that assumption.

There is also no basis for the assumption that any significant post-1946 accounting would be required for a multitude of other Indian tribes. It is highly unlikely that, as the letter suggests, any other Indian accounting case would approach the magnitude of the Navajo claim. The Navajo Tribe is not only the most populous tribe in the country; its assets, for which the Government must account as trustee, far exceed those of other tribes. While the Government's exaggerated estimate of the amount of time necessary to complete the Navajo accounting reports is based on the proceeds of a reservation of approximately 14,000,000 acres, an area containing coal, timber, uranium, oil, and other resources, the Government must account to the Nez Perce Tribe only for its actions with respect to the property and proceeds of a 32,000-acre reservation.

The Government's letter is not only based on unwarranted assumptions, but is also factually incorrect.

For example, it states that as to tribal IIM accounts the pre-1946 report covered a period of 10 years and the post-1946 report will cover more than 30 years. Actually, the Government's initial report showed IIM receipts and expenditures through 1951, a 15-year period. All but a few of the tribe's IIM accounts were closed within the two or three years following 1951. Plaintiff's IIM accounts were virtually eliminated by 1958.

Finally, it is instructive to compare the letter's unsworn estimates with the Government's testimony on this subject cited in its petition for certiorari No. 515, filed August 10, 1970, in *United States* v. *Southern Ute Tribe*. That petition said on pages 10 through 11:

> "At recent congressional hearings [*Indian Claims Litigation*, 91st Cong., 2d Sess., April 10, 1970], the Archivist of the United States, Dr. James P. Rhoades, stated that to bring 32 of the Commission's 44 pending general accounting cases down to 1969 would require an additional 224 man-years of labor—for a staff of thirteen, this would take until 1977."

Now, nine years after this estimate, the Government claims that to bring the accountings in two fewer cases (30 instead of 32 cases in 1970) down to 1980 would require about ten times the man-years formerly estimated for the work through 1969. The Government's 1970 projection included the Navajo accounting case—the largest of them all—while the Government's present 2,000 man-year figure excludes the Navajo work. The startling contrast between the projection given to Congress, which was in a position to question the accuracy of the statement, and the unsupported estimate offered to the Court as an unsworn attachment without cross-examination speaks for itself.

Moreover, the testimony at the 1970 hearings, *supra*, pp. 54-55, showed that there are faster, less expensive ways which may be acceptable to the parties to develop the necessary post-1951 accounting information. Referring to the annual publication of the Treasury Department showing disbursements by funds and appropriations, Indian office operating statements and tribal budget files, Dr. Rhoades stated:

> "While these sources might not provide the exactness and precision of information which would be shown by a full-scale audit, it is believed they are sufficiently accurate to serve as a basis for settling the post-1951 period, and their use would avoid the need for heavy personnel expenditures and long delays in completion of the reports."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

AFFIDAVIT

City of Washington)
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Paul J. Gillis, being duly sworn, deposes and says:

I am a Certified Public Accountant and have been engaged in public accounting for more than twenty-one years. My background encompasses more than fifteen years experience in Indian Tribal claims cases, including the location and evaluation of Government records pertaining to Indian funds and properties, as well as the preparation of reports.

In response to William C. Schaab's request I have reviewed the Petition for a Writ of Certiorari to the Supreme Court of the United States in *United States v. Navajo Tribe of Indians,* No. 78-1329, as well as the letter dated November 17, 1978 from the General Services Administration (GSA) to the Department of Justice, which was attached to the Petition as Appendix B. I have set forth below my opinions on that letter and the reasons for them.

I believe that the letter is self-serving, speculative and highly exaggerated as to the time required to render up-to-date accountings. My opinion is based upon the following.

1. The estimates of time necessary to render up-to-date accountings appear to be based upon the GSA's experience in the Navajo claims. The Navajo cases are an erroneous basis for such estimates. As the expert accountant witness for the Navajo Tribe as well as for more than twenty other tribes, I can safely state that the Navajo case is more complex and of broader scope than any three or four other tribal accounting claims put together. It is therefore the most self-serving "yard-stick" for the Government to use as the basis for its speculations about the time needed to complete its work.

2. Secondly, the Government's estimates of time appear to be based upon the assumption of the preparátion of general accountings for the period after 1946. This assumption, whether inadvertent or deliberate, is in error as it ignores the nature of Plaintiffs' claims and the Court's treatment of them. My experience suggests that accountings for "continued wrong-doings" will be specific in nature, and will be based upon the Plaintiffs' (Tribes') having demonstrated (from their own examination of the Government's records) that the wrong-doings continued.

3. Thirdly, the letter of the GSA overlooks the facts that some portions of the "accountings" have already been done by others and that additional help may be available from the Bureau of Indian Affairs as well as from the GSA's own Records Centers.

4. Finally, my experience with the General Services Administration leads me to conclude that there are two ways of getting the job done: (1) the quick way, and (2) the Government's way. They seldom, if ever, do an accounting the quick way if they can do it the slow way. This has added great time and cost to the resolution of these cases for the parties involved (including the Government).

With regard to the accounting for funds after 1946, I would like to present the following observations:

1. After the decision in *Sioux Tribe v. United States,* 105 Ct. Cl. 725, 64 F.Supp. 312 (1946), the use of tribal funds for administrative purposes by the Bureau of Indian Affairs declined noticeably. This should diminish the need for pervasive disbursements accountings. Furthermore, about this time the "Operating Statement" (Form 7-Illus. 46A) instituted by the BIA should, if used, provide both parties to the claims with helpful information as to the necessity for, and scope of, post-1946 disbursements accountings.

2. Any claims pertaining to the payment of interest or the investment of non-interest-bearing funds are largely

legal matters and will require minimal accounting efforts. For example, I have prepared a preliminary restatement of all Navajo tribal funds for the period 1937 through 1975 showing the balances which the various accounts would have held if the Government had avoided certain practices. This restatement of accounts, including location of records, took less than one man-year of time. It was accomplished in an expeditious manner through the use of Treasury Cash Ledgers (Form 1014-A). Further time was saved through the use of semi-annual interest calculations, rather than getting bogged down in numerous computations of interest on daily balances. Such methods produce an acceptable result without involving detailed accountings of daily receipts and disbursements.

3. I seriously doubt the necessity for substantial accountings to October 1, 1980 for tribal funds carried under the designation of "Individual Indian Monies" (IIM). Based upon my experience, such activity substantially ceased around 1958 for many tribes, including Navajo. Activity after that date with respect to the Navajo Tribe was limited to one IIM account of modest size. Thus, extensive, detailed accountings after 1958 are unnecessary, and any computation of time based upon the necessity of voluminous, detailed IIM accountings from 1946 to 1980 is in error.

I hope that this summary will be helpful in putting in perspective the post-1946 "continued wrong-doings" cases and the accountings for them.

/s/ Paul J. Gillis
Paul J. Gillis, C.P.A.

Subscribed and sworn to before me this 10th day of April, 1979, by Paul J. Gillis.

/s/ Richard Geary Dompka
Notary Public
Seal, Notary Pub. of Mont. Co., Md.

My Commission expires:
July 1, 1982

APPENDIX B

The pertinent provision of the Indian Claims Commission Act of August 13, 1946, Pub. L. No. 79-726, 60 Stat. 1049, as amended by the Act of September 8, 1960, Pub. L. No. 86-722, 74 Stat. 829, is as follows:

"Sec. 20(b) [25 U.S.C. § 70s(b)] When the final determination of the Commission has been filed with the clerk of said Commission the clerk shall give notice of the filing of such determination to the parties to the proceeding in manner and form as directed by the Commission. At any time within three months from the date of the filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims, which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. In similar manner and with like effect either party may appeal to the Court of Claims from any interlocutory determination by the Commission establishing the liability of the United States notwithstanding such determination is not for any reason whatever final as to the amount of recovery; and any such interlocutory appeal shall be taken on or before January 1, 1961, or three months from such interlocutory determination, whichever is later: *Provided,* That the failure of either party to appeal from any such interlocutory determination shall not constitute a waiver of its right to challenge such interlocutory determination in any appeal from any final determination subsequently made in the case. . . ."